



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: MAY 11, 2023

IN THE MATTER OF:

Appeal Board No. 628565

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective January 1, 2023, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed March 21, 2023 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for the employer, a security business, as a security guard from May of 2022 until December 28, 2022. He was assigned to work for one client of the employer for this time. Prior to this job the claimant had never worked as a security guard. The claimant did not have a New York State security license which was required to work as a security guard. The employer had not told the claimant of this requirement when he was hired. The claimant had a felony record.

In September 2022, a coworker of the claimant, who also had felonies on his

record, told the claimant what he had to do to obtain his security license. In early September 2022, the claimant submitted an application to obtain his security license.

In December 2022, the claimant was informed by his employer that the security guard registry showed his status as "rejected". The claimant contacted the licensing agency and was informed that he needed a certificate of good conduct in order to get his license due to the felonies on his record. He asked how long the process would take and he was told it could take from April 2023 through June 2023 to obtain the certificate of good conduct. The agency sent the claimant the paperwork necessary to get the certificate of good conduct. He spoke to the employer and the employer advised the claimant that in order to continue working for the employer he had until January 16, 2023 to provide a letter indicating that his paperwork was being processed or else he would be let go.

On December 28, 2022, the claimant received a text from one of the client's managers telling the claimant that his services were no longer needed, that he was not to return to work the next day, and that he was taken off the schedule until he got his security license fixed.

On December 30, 2022, the claimant received a letter from the licensing agency indicating that his application for a certificate of good conduct was being reviewed. When he took the letter to the employer, he was told that the letter was not good enough and that the letter must indicate that his application for a license was being processed. The claimant did not voluntarily leave his position.

OPINION: The credible evidence establishes that the claimant was separated from his employment when the employer's client sent a text to the claimant on December 28, 2022, telling the claimant that his services were no longer needed, that he was not to return to work the next day, and that he was taken off the schedule until he got his license fixed. However, the employer had given the claimant a deadline of January 16, 2023 to provide a letter and had not assigned him any work after December 28, 2022. Further, the claimant provided the employer with a letter indicating that his application for a certificate of good conduct was under review. As the employer provided no work to the claimant after the client no longer wanted the claimant's services, we conclude that the claimant did not voluntarily separate from his employment.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective January 1, 2023, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER